

## **PLANNING BOARD OF THE CITY OF BANGOR**

**MEETING OF TUESDAY, AUGUST 17, 2004**

### **MINUTES**

**Board Members Present:**

**Robert Guerette, Chairman  
Jonathan Siegel  
Ryan King  
David Clark  
Hal Wheeler  
William Masters  
Nathaniel Rosenblatt**

**City Staff Present:**

**Katherine Weber  
Rod McKay  
Stan Moses  
Jim Ring  
Peter Witham**

**News Media Present:**

**Dawn Gagnon, Bangor Daily News**

Chairman Guerette called the meeting to order at 7:00 p.m.

### **CONSENT AGENDA**

Chairman Guerette asked if any Member would like to remove an item from the Consent Agenda. Mr. Rosenblatt asked to remove Items 4 and 4A. Mr. King asked to remove Item 1. Items 1, 4, and 4A were moved to New Business. Mr. Guerette asked for a motion. Mr. Rosenblatt moved to approve Items 2 and 3 on the Consent Agenda. Mr. King seconded the motion, and the Board voted unanimously (5-0) to approve the Consent Agenda. Those items approved are as follows:

**Item No. 2:      Site Development Plan approval to fill and grade off of Texas and Maine Avenues in a Government & Institutional Service District. University of Maine at Augusta (UCB), applicant.**

**Item No. 3:      Site Development Plan approval to construct two additions totaling 19,500 square feet to the existing Guard Facility in a Government & Institutional Service District. Maine Army National Guard, applicant.**

## **PUBLIC HEARINGS**

### **Item No. 5:      **Planning Board Determination of Consistency of Waterfront Public Improvements and Site Development Plan Approval. City of Bangor, applicant.****

Chairman Guerette opened the Public Hearing, and asked the applicant to make a brief presentation. Mr. Rodney McKay of the City of Bangor Community and Economic Development Department described the project area along the Penobscot River's edge at the waterfront. He said that this application is driven by an application for a grant with the State Community and Economic Development Office. The grant for \$500, 000 would be from the Maine Investment Trust Fund, and a Public Hearing is a requirement of the grant process.

Member King asked if the railing on the waterfront is going to be replaced and inquired about the location of the Cruise boat. Mr. McKay explained that the improvements would include bulkhead strengthening and a new cap for permanent paved walkways, landscaping, and benches. Mr. James Ring, City of Bangor Engineer, further explained the details of the improvements that would dissuade bird perching and accommodate larger boats. Mr. Ring explained the design of the new railing and pavement, and explained that the City's expenses would help to leverage the grant request.

Chairman Guerette asked for proponents. There being no proponents, Chairman Guerette asked for comments from opponents. There being no opponents, Chairman Guerette closed the Public Hearing, and asked for Staff for comments.

Planning Officer Weber asked that members of the audience sign an attendance sheet to be included with the application. Ms. Weber explained that the City of Bangor is asking the Planning Board for two approvals. One approval is to confirm that the Water's Edge Improvements are consistent with the Comprehensive Plan. This is required in order to apply for the Maine Investment Trust Fund grant. The second request is for the approval of the City's Site Development Plan for these improvements.

Ms. Weber indicated that the Comprehensive Plan, in many sections, discusses improvements to the waterfront in its physical development, with respect to its economic development, and with the goal of converting it from industrial use to water-oriented recreational use with civic, residential, and office uses. The Trust Fund application is for 12 specific improvements, including bulkhead, riprap, walkways, landscaping, traffic circulation, parking, pedestrian crossings, and signage. Ms. Weber indicated that Staff finds that the Water's Edge Improvement Project is consistent with the Comprehensive Plan, and recommends that the Planning Board also vote to find it consistent with the Comprehensive Plan. Staff also finds that the Site Development Plan

is complete and meets the standards of Section 165-114, A-J and recommends approval.

Mr. Wheeler said that his Planning Board packet arrived in the mail on the same day as the Planning Board meeting, and that he had not had a chance to review the packet thoroughly. However, he did find a copy of an application that was approved by the City Manager in 2003 for this project, and asked if it was the same as the one before the Board. Ms. Weber deferred the question to Mr. McKay for further explanation.

Mr. McKay explained that the State invited the City in 2003 to pre-apply for the grant, and that this year the City was selected to submit a full application. Mr. Wheeler asked why, on the preliminary application, it was stated that it complied with the Comprehensive Plan without it having gone before the Planning Board for approval. Mr. McKay explained that there has been a long and on-going history of the City's involvement in waterfront development since the 1970's. Development of the waterfront has been phased and there will be other phases that will be before the Planning Board in the future.

Mr. McKay explained that the application that the City Manager signed in 2003 was a pre-application and that to the best of his knowledge the improvements were consistent with the Comprehensive Plan. He indicated that what the Planning Board is being asked is to do now for the full application is to confirm that the proposed improvements are consistent with the Comprehensive Plan. Mr. Wheeler indicated that he appreciated the explanation and, that in spite of the apparent contradiction, he was satisfied.

Mr. Ryan King commented that, by giving his tours on the American Cruise Boat, he believed that passengers in the future would appreciate the proposed improvements.

Mr. Guerette then asked for a motion. Mr. Rosenblatt moved that the Planning Board find that the Water's Edge Improvements Project is consistent with the Comprehensive Plan. Mr. King seconded the motion. The board voted unanimously (5-0) to find that the Water's Edge Improvements Project is consistent with the Comprehensive Plan. Mr. Roseblatt moved to approve the Site Development Plan for the Water's Edge Improvements Project. Mr. King seconded the motion. The Board voted unanimously (5-0) to approve the Site Development Plan for the Water's Edge Improvements Project, City of Bangor, applicant.

**Item No. 7: Preliminary Subdivision Plan approval of a 28-lot subdivision located at 606 Essex Street, and off of East Broadway and Lancaster Avenue in a Low Density Residential District. Land Investments, Inc., applicant.**

Chairman Guerette opened the Public Hearing, and asked the applicant or the company's representative to make a brief presentation. Mr. Vinal Applebee, of Ames

Architects and Engineers, representing Land Investments, Inc., indicated that Mr. Doug Schmidt and Mr. Jay Smith of Land Investments, Inc. were present, and also the presenter at the July 6, 2004 Planning Board meeting, Mr. James Manzer, also of Ames AE.

Mr. Applebee described the activity that had transpired during the 30 plus days since the Planning Board had voted to continue this item from the July 6, 2004 meeting. He discussed the history of the project's review before the Board, continuance, and additional submittal on August 4, 2004 of items requested by the Board. This information included Minutes of a neighborhood meeting held on July 22, 2004 to address issues brought up at the July 6, 2004 Public Hearing. Twelve (12) neighbors were also present at the site visit. Discussions at the neighborhood meeting included abutters who wished to acquire land for their pre-existing encroaching garage, issues of traffic, noise, blasting, pedestrian traffic, missing traffic signs, access to the subdivision via Essex Street frontage, and anticipated traffic problems at the Alden Street and Broadway traffic light.

Mr. Applebee noted that at the July 6 Public Hearing, he understood that there were five specific items to be addressed, specifically, (1) the flag lot, (2) right, title, and interest in two lots, (3) road grading, (4) vertical curves, and (5) drainage. He related that the right, title, and interest issues with the City lot and the State lot were in progress, that the three engineering issues had been resolved, and that the flag lot was an item on this agenda (as Item No. 1).

At the July 6, 2004 meeting, the Planning Board directed the applicant to hold a neighborhood meeting. Nine (9) people attended of the 30 invited from the list of abutters. The first hour was videotaped. Minutes of the meeting were given to the Board. A resolution with the Dunns, owners of the garage, was reached and, upon approval of the subdivision, they may purchase the abutting lot. Mr. Brown on East Broadway had concerns about the traffic on the narrow, steep street, including maneuvering space for plow and sand trucks. Mr. Applebee thought that, with 28 families, there would be more response to travel difficulties on that section of the street. At East Broadway and Bill Street, a three-way intersection, there is no stop sign, but the traffic study did recommend that a stop sign be placed on the dead end of East Broadway.

Ms. Ronel Ellis was concerned about blasting. Mr. Applebee emphasized that there are a number of State and local Ordinances regulation blasting and that insurance is required for blasting. A contractor does not want to hear about a claim and will make sufficient efforts to protect against them. Mr. Brown suggested that property values would drop. There was a question as to why a subdivision entrance was not proposed on Lancaster Avenue. It was explained that the designers decided the closeness of abutting buildings would impact neighbors more on Lancaster than on East Broadway. The accident history was looked at in the traffic study, and neighbors said that there were many unreported accidents at this location. The open space issue was discussed along with better pedestrian access. The developers agreed to provide a 10-foot public

easement through the Essex Street frontage. The abutter was consulted and the applicant proposes to put in a walk, and fence to demarcate the private property from the public easement. No Homeowners' Association is proposed at this time.

Mr. Applebee spoke about open space and indicated that the designers have added 23% more open space since the Public Hearing by modifying lot lines to make the opportunity for a pedestrian way from Essex Street to Alden Street without walking on the busier Bill Street and East Broadway. There was no resolution on the discussion of what constituted open space, and the City's Ordinance provides little guidance on this issue. Mr. Applebee, from experience with previous projects, was not certain that the City would readily accept the open space for a new park and its associated liability any more than the applicant would. With larger lots, children may play in yards. The intent of open space is to set aside 5% of the land as non-buildable. Without that provision, the detention pond could be put underground and the designers could create another lot. As proposed, this layout provided a non-buildable lot, and a pedestrian walking trail.

A Traffic Impact Study was undertaken and the results indicate that minimal traffic impacts are expected from the proposed subdivision. Traffic counters were set up in the area and levels of service at the signal light at Alden Street and Broadway were studied. It was mentioned and there was agreement that it is a terrible intersection but that the addition of the subdivision would not create significant additional delays.

Mr. Applebee summarized the items that needed to be resolved. The pursuit of deeds for the D.O.T. and the City properties were on track with agreements from the State and the City Council. The applicant is willing to prohibit vehicular access on the Essex Street frontage. Right, title, and interest of Land Investments, Inc. was confirmed by all of the principals of that entity.

Chairman Guerette thanked Mr. Applebee for his presentation, and asked the Board members for their comments. Mr. Masters asked Mr. Applebee if it was correct that the subdivision was required to have both a detention pond and open space. Mr. Applebee concurred. Mr. Master said that when the detention pond is full, it would not be a good area to play. He asked where in the Ordinance does it say that the detention pond can be in open space. Mr. Applebee thought that it was subject to interpretation. Mr. Masters said that he is happy with new housing, but consideration for families with children needs to be given, and that older children need places other than streets and front yards to play. Mr. Applebee said that he did not suggest that children should play in the detention pond.

Mr. Applebee said that the land acquired from the State and City was a small fraction of the open space. Mr. Masters said that he assumed that, even though there was no definition in the Ordinance, the implication is that open space is a place for people to play. Mr. Applebee reiterated the Ordinance requirement for 5% Open Space with no guidelines as to what it should contain. He indicated that he had seen

other subdivisions approved recently that did not contain open space. Mr. Masters said that he thought that there is a loop hole in the Ordinance that is being taken advantage of, not only in this application, but in others; and that this it is not good planning. It is just as much of a liability as to give children no alternative but to play in the streets.

Chairman Guerette thanked Mr. Masters for his comments, and invited Mr. Applebee to respond. Mr. Applebee cited the local public facilities nearby, and asked if the City was willing to take on additional public open space to maintain in a condition for children to play in with its associated liabilities. He noted that the applicant is proposing a pedestrian route from Essex Street to the cul-de-sac where people may make there way along the streets. He said that it would be possible to continue the route along the drainage easement areas, but that they wanted to encumber as few lots as possible.

Mr. Rosenblatt said that he had questions on the technical aspects of the open space, and asked for Mr. Applebee to go over the proposed route from Broadway to Essex Street, which Mr. Applebee did. Mr. Rosenblatt asked him to explain the ownership plan, especially, near the entrance to the subdivision on East Broadway. He asked Mr. Applebee if a condition of approval to update the ownership plan would be acceptable. Mr. Applebee responded that he thought that it would be. Mr. Rosenblatt asked if there was a plan to put a stop sign in at the entrance of the subdivision, which there was.

Mr. Wheeler asked about the size of the detention pond in comparison to the total open space. Mr. King commented on the open space and the pedestrian pathway, and was pleased that the applicant had held a neighborhood meeting. Mr. Clark asked about the distance between the rear property lines to the Interstate, and if it was possible for a child to walk to the Interstate. Mr. Applebee indicated that the Maine D.O.T. has a fence along that right-of-way line, and that there is also a ten or fifteen-foot drop off to the highway. Mr. Clark said that he was concerned that the only entrance for the subdivision is on East Broadway.

Mr. Guerette observed that the stormwater detention pond label may be a mistake, and asked if there were any other Board comments. He then invited members of the audience to comment on the application, unless there were any objections from the Board since the Public Hearing had been closed.

Mr. Lester Brown, 71 East Broadway, spoke about the issues of the proposed subdivision being at the crest of the hill. He noted that there was a significant drop in elevation to the street that is very narrow and needs to be improved, especially, with the addition of new homes using it. Mr. Guerette suggested that Mr. Brown's comments might prompt the applicant and the City Engineer to respond.

Mrs. Ronel Ellis, 101 Broadway, spoke about her concerns for safety since a snowplow removed the yield sign at Bill and East Broadway some years ago at the location where the applicant proposes one stop sign. The issue for her is to keep the

neighborhood quiet and safe. Ms. Ellis noted that the roads are used to walk on by pedestrians and are very narrow. Ms. Ellis asked what happens to the traffic when there is one stop sign at a 3-way intersection. She emphasized this point several times. She went on to say that, while the applicant acknowledges the existing unsafe condition, the issue needs to be addressed with the proposed increase in traffic due to the proposed subdivision. She expressed her appreciation for the addition of the walkway, and with prohibiting vehicular access to Essex Street.

Mr. Guerette asked for Staff comments. Planning Officer Weber suggested that perhaps the Board would like Mr. Applebee or Mr. Ring to address some of the previous comments. Mr. Ring offered to answer the Board's questions. Mr. Rosenblatt asked about the traffic study, and the increase from 263 to 280 vehicles on Saturdays. Mr. Rosenblatt said that it appeared to be a significant increase on the existing roads, and asked if the City has any plan for traffic controls at East Broadway and Bill Street. Mr. Ring explained traffic theory and the traffic report. He added that the Police Department determines the placement of stop signs, and that he has requested that this intersection be examined. Mr. Rosenblatt said that he wanted to be certain that the issue could be settled before the subdivision is approved, and tie the issue to Final Subdivision Plan approval.

Mr. Siegel asked about the issue of a single egress of the subdivision with respect to emergency access. Mr. Ring acknowledged that the issue has been discussed among Staff, but that for small subdivisions, such as this one, it is not as much of an issue. Mr. Siegel said that, in light of Mr. Brown's comments regarding the slope on East Broadway, this area might become a bottleneck. Mr. Ring said that there is a standard for roads and that a 6% slope is not significant.

Mr. Masters asked Mr. Ring who reviews the plans for subdivisions, and if there is a recent trend of putting detention ponds in open space. Mr. Ring said that it has been done in many of the subdivisions over the past several years because there is no specific standard for what constitutes open space, only that it not be a buildable lot. Mr. Masters commented that many of the new subdivisions have a single entrance, and asked if that standard is being reviewed. Mr. Masters said that he is still concerned about a loophole in the Ordinance with respect to open space, and wondered if Staff has talked about it. Mr. Ring said that the definition of open space is unspecific. If it is a concern of the Board, then it could be discussed, but that he would defer to Ms. Weber on this issue. Mr. Masters said that because of the precedent, the definition of open space now includes detention ponds; but children still need places to play.

Mr. Rosenblatt asked Ms. Weber about the process for dealing with Ordinance language issues, such as this, besides in the forum of a particular item. Ms. Weber suggested a session where issues like these could be discussed separate from specific applications. With respect to the open space issue, the Ordinance says that it is up to the Planning Board to decide with their discretion. Mr. Rosenblatt said that an Ordinance language session ought to be scheduled.

Mr. Guerette asked staff for comments. Planning Officer Weber reminded the Board that approval of the Flag Lot in Item No. 1 was needed prior to Preliminary Plan approval. Mr. Wheeler indicated that he was glad that the Planning Officer brought this up, and believed that all of the issues brought up needed to be discussed by Staff and the Board. He said that some of them may be brought up with the upcoming discussions of the Comprehensive Plan and that the Board needs to treat every project the same, and not single out one to be treated differently than those that have been approved. He does side with Mr. Masters, and considers the "loophole" of open space something that needs to be addressed.

Mr. Guerette suspended discussion of Item No. 7 and moved to Item No. 1 in New Business.

**Item No. 1:           Site Development Plan approval to create a Flag Lot between and behind 139 and 145 Lancaster Avenue in a Low Density Residential District. Land Investments, Inc., applicant.**

Mr. Vinal Applebee, representing Land Investments, Inc., described the parcel and indicated that he believed that it met the standards of the Ordinance for flag lot approval. He said that the applicant considered this a better location for a driveway and less intrusive to the neighborhood than the location of a street into the proposed subdivision. Mr. King was not convinced that it would not affect the neighbors, and inquired if construction activity would occur only in day light hours. Mr. Applebee responded that this was proposed to be a residential lot.

Mr. Guerette asked for Staff comments on the proposed flag lot. Ms. Weber commented that Staff had reviewed the application, and that the parcel met the standards of the Low Density Residential District. Staff, therefore, recommended approval of the Flag Lot between and behind 139 and 145 Lancaster Avenue in a Low Density Residential District, for Land Investments, Inc., applicant.

Mr. Rosenblatt moved to approve the Site Development Plan for a Flag Lot. Mr. Wheeler seconded the motion. The Board voted unanimously (5-0) to approve the Site Development Plan of a Flag Lot by Land Investments, Inc. between 139 and 145 Lancaster Avenue as indicated on the Preliminary Subdivision Plan.

**Discussion of Item No. 7 (Continued)**

Mr. Guerette returned to the discussion of Item No. 7 for a Preliminary Subdivision Plan application at 606 Essex Street for Land Investments, Inc. Planning Officer Weber described the project and indicated that Staff recommended approval of the Preliminary Subdivision Plan for Land Investments, Inc. at 606 Essex Street subject to the conditions that:



1. *Right, Title, and Interest for the unbuilt portion of Alden Street be secured; and*
2. *Traffic considerations be addressed.*

Mr. Masters expressed his apologies to Mr. Applebee for expressing his frustration with the Subdivision Ordinance earlier in the meeting. Mr. King thanked the applicant for responding to the Planning Board's request for more information in the 30-plus days since the application was before the Board.

Mr. Rosenblatt moved that the Board grant Preliminary Subdivision Plan approval for Land Investments, Inc. at 606 Essex Street with four (4) conditions, those being that:

1. *Right, Title, and Interest be obtained for the un-built portion of Alden Street that abuts interstate 95;*
2. *There be no vehicular access from Essex Street;*
3. *Prior to Final Subdivision Plan approval, the plan be updated with current ownerships, and;*
4. *that traffic information from the Police Department be provided to help review the issues discussed.*

Mr. Wheeler seconded the motion, and the Board voted unanimously (5-0) to approve the Preliminary Subdivision Plan at 606 Essex Street for Land Investments, Inc.

## **NEW BUSINESS**

Chairman Guerette opened THE discussion of the remaining items moved from the Consent Agenda to New Business.

**Item No. 4:**      **To consider a request to extend the starting and completion dates for construction of a two-story office building located at 1048 Union Street. Hilltop Inn, Inc., applicant.**

Chairman Guerette asked if the applicant or his representative was in the audience. There being no representative in the audience, Chairman Guerette opened the item up for discussion.

Mr. Rosenblatt explained that his reason for requesting the removal of this item from the Consent Agenda was the vagueness of the Ordinance in its description of extension requests. Mr. Rosenblatt discussed Section 165-113 E and the possibility of making several interpretations of it.

Planning Officer Weber conceded that the section was confusing and that historically it has been interpreted in different ways. The memorandum was a

recommendation from Staff as a broad interpretation considering the time frame of the original application, the number of extension requests, and that this seemed to be a reasonable request rather than one with no apparent reason. However, this is another case where the interpretation is up to the Board, and if there is a need for more specificity in this section of the Ordinance, then it could be a good discussion item for a workshop.

Mr. Masters asked who determines the validity of reasons for extension request. Ms. Weber explained that the applicant must state the reasons for such a request and, because the applicant is not present, then Staff could not speak for them. A continuation could be considered, but ultimately it is the Planning Board that determines the validity of the extension request.

Mr. Siegel asked if the reason for the extension request was to revamp the original proposal, or if the surrounding conditions around the development had changed. Ms. Weber could not speak for the applicant who was not present, but suggested that the Board could continue the item in order to ask the applicant. She noted that this application was a build out of the approved site plan, and that conditions in the area had not changed. Mr. Rosenblatt cited the reason given in the request letter was that the prime tenant had committed to the development, but that the interior office layout was needed before construction begins.

Chairman Guerette believed that the prospective tenant was the same one who occupies other buildings on site. He found the Ordinance language to be confusing also, but indicated that he believed the application passed muster, and stated his support for extension of the Completion Date.

Mr. Rosenblatt moved to approve the Completion Date Extension for 1010 Union Street, Hilltop Inn, Inc., applicant. He also asked that the issue of the extensions be included in the list of Ordinance amendments, and turned into plain English. Mr. Wheeler said that he would support that, as did Ms. Weber. Mr. Guerette asked if that motion included the provision that it be a final extension. Mr. Rosenblatt indicated that he would include that provision. Mr. Clark seconded the motion.

Mr. Ring commented on the language in the Ordinance. Mr. King indicated that he would prefer to continue the item in order to hear from the applicant and would vote to support the continuance at this time, rather than vote in favor of the motion. The Board voted four in favor and one opposed to the motion approving the extension of the Completion Date to September 2005.

**Item No. 4A:      Site Development Plan approval to construct a new gravel driveway 1,050 feet long, and a hexagonal gazebo, 10 feet in diameter in a Low Density Residential District. Husson College, applicant.**

Mr. Rosenblatt stated his reasons for requesting the removal of this item from the Consent Agenda, and postponing the item until the first meeting in September. He said that the application was submitted to the Planning Office on the Friday before the meeting for which it was scheduled and that, since Staff had not reviewed it, it might call into question the credibility of the process. Mr. Rosenblatt said that the public nature of Planning Board meetings require that more notification be given than those sent on the Friday before the meeting, and that the Planning Board needed more time to read the memorandum than a few hours since most Members received their packets this afternoon.

The By-Laws of the Planning Board require that the agenda and memorandum be sent out five days before the Planning Board meeting. Mr. Rosenblatt moved that the Board postpone this item to the September 7, 2004 Planning Board Meeting. Mr. Wheeler seconded the motion, and the Board voted 4 to 0 to postpone the item. Mr. King abstained from the voting.

Mr. Wheeler asked that a ruling from the City Solicitor be obtained on abstentions from voting by Planning Board members. Ms. Weber said that she would check with the City Solicitor. Chairman Guerette asked Mr. King the reason for his abstention. Mr. King gave his reasons for abstaining as that there was not enough time to read the memorandum on all of the items and that even this item was too rushed for him to decide on a continuance. Mr. Guerette asked that Mr. King make a vote for or against the motion to continue. Mr. King then voted not to continue the item.

**Item No. 8:            Planning Board Consideration of a Site Visit to the Proposed Libby View Subdivision Site.**

The Planning Board discussed at length the pros and cons of visiting this proposed subdivision site, making it a matter of course to visit all sites, and whether this would set a precedent or not. The Board decided to visit this site at 606 Essex Street on August 21 at 6:00 p.m.

**APPROVAL OF MINUTES**

**Item No. 6:            Planning Board Approval**

Mr. Wheeler moved to approve the Minutes of the Planning Board meetings of July 20, 2004 and August 3, 2004. Mr. Clark seconded the motion, and the Board voted unanimously to approve these meeting Minutes.

Chairman Guerette asked for a motion to adjourn. It was a vote unless doubted.